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ABSTRACT

Provided is an overview of the Education for all Handicapped Children Act (Public Law 94-142), including a report of the history of federal involvement in the education of the handicapped. Sections cover ten critical issues dealt with in the new law, such as the concepts of zero reject, appropriate education, and least restrictive alternative, and provisions for procedural safeguards, single agency responsibility, training of professional personnel, and accountability. In summary, it is noted that the following are the specific purposes of the law: (1) to insure publicly funded special education and related services for all handicapped children no later than 1978, (2) to insure the rights of handicapped children and their parents and guardians; (3) to relieve the special education financial burden of state and local governments, and (4) to assess and insure the effectiveness of efforts to educate handicapped children. (IM)

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PUBLIC LAW 94-142
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

AN OVERVIEW OF THE FEDERAL LAW

Jeffrey J. Zettel

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PUBLIC LAW 94-142
THE EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

AN OVERVIEW OF THE FEDERAL LAW

JEFFREY J. ZETTEL

I. Background: A History of Federal Involvement in the Education of the Handicapped

Prior to 1966, the Federal government had done very little to assist in the education of handicapped children. Probably the biggest assistance that the handicapped received during this period in terms of public acceptability or stimulus for legislation came from the fact that President Kennedy had a retarded sister and Vice President Humphrey had a retarded grandchild. Largely as a result, the Presidential Panel on Mental Retardation was appointed in 1961 and charged with the task of developing a national plan to combat mental retardation. The first Federal law to assist handicapped children, however, wasn't passed until four years later. In 1965, Congress passed Public Law 89-313 to amend Title I of the Elementary and Secondary Education Act (ESEA) to financially assist handicapped children in State operated or supported schools that were not eligible to receive funds under the original act.

In the following year, 1966, Congress passed Public Law 89-750 which added a new Title VI to ESEA. Through this act, Federal funds became available to the States to initiate and/or expand local programs to meet the special educational and related needs of handicapped children. In addition, P.L. 89-750 also established the Bureau of Education for the Handicapped within the U. S. Office of Education to provide the necessary leadership and administration of programs for the handicapped.

On April 13, 1970, the Amendments to the Elementary and Secondary Education Act, Public Law 91-230, were signed into law which repealed Title VI of ESEA as of July 1, 1971 and in its place created a separate act -- The Education of the Handicapped Act. Funds under Part B of this act authorized non-matching formula grants to States to assist them to further initiate, expand, and improve their educational programs for handicapped children.

Increased joint cooperation and planning between the States and the Federal government continued to develop with the passage of the 1967 Amendments to ESEA which earmarked funds from Title III (Supplementary Education Centers and Services) to guarantee funds specifically for the handicapped and also earmarked funds from Title V to help State educational Agencies expand their programs for handicapped children. Furthermore, in 1968, the Congress mandated that at least 10% of each State's allotment of funds authorized under the Vocational Education Act would have to be used for vocational education programs for specifically handicapped individuals.

It needs to be noted here that such cooperative efforts and Federal financing through non-matching formula grants caused the Federal government to remain only as a catalyst to local and State program development for the handicapped. It was not until later events, litigation, and the development of a new national awareness as to the educational needs of our handicapped citizens that this passive role on the part of the Federal government changed dramatically.

Litigation and Gaining the Right to An Education

As far back as 1954, the United States Supreme Court established the principle that all children were to be guaranteed the right of an equal educational opportunity.

> In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education. Such an opportunity ... is a right which must be made available to all on equal terms. (Brown v. Board of Education)[1]

The right to a free, publicly supported education for all handicapped children, however, was not clearly established until 1972.

In 1971, the Pennsylvania Association for Retarded Children (PARC) and the parents of 13 mentally retarded school-aged children brought a class action suit in a Federal court against the Commonwealth of Pennsylvania, its agencies, and its school districts for the failure to educate all of its retarded children. The parents argued that the denial of such education was in violation of the equal protection clause of the 14th Amendment of the Constitution of the United States. They argued that if education was provided for some, it must be provided for all.

From the expert testimony presented at the trial evolved three major precedents regarding the education of retarded children:

1. All mentally retarded children can learn and benefit from an educational program -- there are no uneducable children.

2. Education cannot be defined solely as the provision of academic experience to children. Rather, education must be seen as a continuous process by which individuals learn to cope and function within their environment. Thus, for some children to learn to clothe and feed themselves is a legitimate outcome achievable through an educational program.

3. The earlier these children are provided with educational experiences, the greater the amount of learning that can be predicted.[2]

Upon hearing the extensive testimony and pertinent facts presented by both parties, the court ruled:

1) By October, 1971, the plaintiffs were to be reevaluated and placed in educational programs.
2) By September, 1972, all retarded children between the ages of 6 and 21 were to be provided with a publicly supported education.

3) Local districts providing preschool education to any children were required to provide the same for mentally retarded children.
4) It was highly desirable to educate these children in a program most like that provided to nonhandicapped children.
5) No child who was mentally retarded or who was thought to be mentally retarded could be initially assigned or reassigned to a regular or special education status or excluded from a public education without a prior recorded hearing before a special hearing officer. Furthermore, to guarantee that the principle of due process would be properly assured to all retarded children within the State, the court established a 23 step procedure to be followed.[3]

For those who took a "let's wait and see what happens attitude" after PARC, a more impressive Federal decision was handed down the following year in the District of Columbia. In 1972, the parents and guardians of seven District of Columbia children brought a class action suit (Mills v. Board of Education) against the District of Columbia's Board of Education, the Department of Human Resources, and the Mayor for failure to provide all children with a publicly supported education. The plaintiff children ranged in age from 7 to 16 years of age and were allegedly excluded from the public schools because of the following types of problems: slight brain damage, hyperactive behavior, epilepsy and mental retardation, and mental retardation with an orthopedic handicap. Three of these children resided in public residential institutions without any educational program. The others lived with their families, and when they had been denied a public education, they were placed on waiting lists for tuition grants for private instruction.

In issuing its verdict, the Federal court decreed:

1. All children, regardless of any exceptional condition or handicap, have the constitutional right to a publicly supported education.

2. Any rules, policies, and practices which excluded children without a provision for adequate and immediate alternative educational services and the absence of prior hearing and review of placement procedures denied such children the right of due process and equal protection before the law.[4]

The defendants in the Mills case claimed, however, that it would be impossible for them to afford the relief sought unless the Congress appropriated more funds. The court in turn responded:

> If sufficient funds are not available to finance all of the services and programs that are needed and desirable in the system, then the available funds must be expended equitably in such a manner that no child is entirely excluded from a publicly supported education consistent with his needs and ability to benefit therefrom.[5]

More than 46 similar court cases in 28 States have followed the PARC and Mills decisions.[6] The right of a handicapped child to a free and an appropriate education can no longer be questioned. This principle has been irrefutably reaffirmed by the laws of the land.

The Need for Further Federal Assistance

Although many States made genuine efforts to comply with such court decisions, many said they were often unable to provide all of the necessary educational and related services needed by their handicapped population because of inadequate financial resources. To provide the financial assistance which was needed by the States to assure that a free and an appropriate public education was provided for all of their handicapped students, Congress passed the Educational Amendments of 1974. Public Law 93-380 extended the Education of the Handicapped Act for three years and increased the authorization levels for the basic State grant program (ESEA, Title VI-B) from approximately $100 million to $660 million. In addition to sigificantly increasing the level of Federal appropriations for the education of the Nation's handicapped youth, P.L. 93-380 also incorporated many of the major principles established by the right to education cases and added important new provisions to the Education of the Handicapped Act which required States to:

1) establish a goal of providing full educational opportunities to all handicapped children;
2) provide procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children;
3) establish procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, are educated with children who are not handicapped;
4) and that special classes, separate schooling, or other removal of handicapped children from the regular education environment occurs only when the nature of the severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily;
5) establish procedures to insure that testing and evaluation materials and procedures utilized for the purposes of classification and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Legislative Hearings and the Need for P.L. 94-142

Beginning in April, 1975, the Subcommittee on Select Education and the Subcommittee on the Handicapped held extensive hearings both in Washington, D. C. and elsewhere across the country to extend and amend the Education of the Handicapped Amendments of 1974 (Public Law 93-380). Testimony was heard from individuals representing legislators, parents, parent organizations, consumers, educational associations, and educators from local, State, and National levels. Through such hearings, Congress discovered that even though Federal and State judicial and legislative actions have brought about considerable progress toward providing educational services for the handicapped, there was still need for a much greater effort. In part, the Congress found there to be:

1) over 1.75 million handicapped children in the United States who were being excluded entirely from receiving a public education solely on the basis of their handicap;
2) over half of the estimated 8 million handicapped children in this country not receiving the appropriate educational services they needed and/or were entitled to;
3) many other handicapped children were still being placed in inappropriate educational settings because their handicaps were undetected or because of a violation of their individual rights.[8]

These statistics, according to the Subcommittee on Select Education, have both short and long range affects. The short range implications are that there are over 50 percent of the handicapped children in this Nation who are denied a fundamental educational opportunity. The destiny of these children will continue to depend on a commitment or the lack of a commitment of our Federal, State, and local governments to identify these children as a priority among the competing needs of our Nation.

The long-range implications are that taxpayers will spend billions of dollars over the lifetime of these handicapped individuals simply to maintain them as dependents on welfare and often in institutions.

With proper educational services many of these handicapped children would be able to become productive citizens contributing to society instead of being left to remain burdens on society.[9]

The need, therefore, is very clear.

II. Public Law 94-142: The Education for All Handicapped Children Act - An Overview

The Education for All Handicapped Children Act, P.L. 94-142, establishes the right of every American child, including the most severely handicapped, to an education. There are no exceptions. The aim of the law is quite clear. Stated in its own words, its goal is:

> to assure that all handicapped children have available to them... a free and an appropriate education which emphasizes special education and related services designed to meet their unique needs.[10]

Although we often refer to Public Law 94-142 as being a single act, from a conceptual point of view, we can look upon this piece of Federal legislation as actually being two acts within one.

1. It is a Rights Act -- First and unquestionably, P.L. 94-142 is a mandate that all handicapped children must be educated. Specifically, the law states that beginning in September, 1978, all handicapped children aged 3 to 18 shall receive a free, appropriate, public education. The law further orders that by September, 1980, such an education shall be available to all handicapped children aged 3 to 21 (except in instances where the education of the 3 - 5 and 18 - 21 age ranges would be inconsistent with State law or practice or any court decree).

Secondly, the law provides for protection in the manner and way in which handicapped children will be educated. It provides for procedural safeguards such as the right to due process, non-discriminatory testing and evaluation, and a parent's right to access to his or her child's records.

Finally, the law speaks to a handicapped child's right to have an individually designed educational program and his right to be educated in the least restrictive environment.

2. It is a Management and a Finance Act. Public Law 94-142 establishes specific management, reporting and evaluation procedures for Federal, State and local educational agencies. Secondly, this law provides for Federal funds to help assist State and local educational agencies in providing the special educational and related services needed to meet the unique needs of all of their handicapped students.

Ten Critical Issues Which Public Law 94-142 Deals With

1. The Concept of Zero Reject -- P.L. 94-142 stipulates that all handicapped children, including the most severely handicapped, will be provided with a free, appropriate public education. Furthermore, the law orders for a priority in the use of Federal funds for 1) handicapped children who are still unserved; and 2) to inadequately served children with the most severe handicaps (e.g. children who may be receiving "some sort" of an education but who are not receiving the special education required because of their particular handicapping condition).

2. The Concept of an Appropriate Education -- Beginning in September, 1978, any local or intermediate State educational agency wishing to receive monies under P.L. 94-142 will be required to develop an "individualized education program" for every handicapped child residing in its geographical boundaries. The "IEP" will consist of a written statement, developed at a meeting attended by a certified special educational or supervisory representative of the local or intermediate educational agency, the teacher, the parents or guardians, and when appropriate, the child himself. Included in this written document will be a) a statement of the present levels of the educational performance of the child; b) a statement of annual goals, including short term instructional objectives; c) a statement of specific educational services to be provided and the extent to which the child will be able to participate in regular educational programs; and d) a statement of the anticipated duration of such services and the evaluation procedures and schedules which will determine if the instructional objectives are being met.

3. The Concept of Least Restrictive Environment -- Specifically, the law calls for States to adopt:

> ...procedures to insure that, to the maximum extent appropriate, handicapped children, including children in public and private institutions or other care facilities, are educated with children who are not handicapped and that special classes, separate schooling, or the removal of handicapped children from the regular education environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

The important point to remember here is that all handicapped children, not just the mildly handicapped, are to be placed as close to the normalized setting as possible. And that placement in the least restrictive alternative setting will be determined by his unique individual needs.

Public Law 94-142 does not mandate mainstreaming, but it says that handicapped children should be educated with children who are not handicapped unless the nature or severity of the handicap is such that education in the regular classroom with the use of supplementary aids and services cannot be achieved satisfactorily.

4. Provides for Procedural Safeguards

A. Public Law 94-142 provides for due process of the law. Due process has evolved primarily because of specific examples of abuse and decision making power on the part of a number of local school administrators and Boards of Education. In the past, it was easy for a school principal to say, "Your child cannot come to school because he is a behavioral problem, or because he can't walk, or because he can't learn. Such arbitrary and capricious decisions can no longer be tolerated. Under this new law, they are not. Due process under 94-142 provides procedures for insuring that handicapped children and their parents or guardians are guaranteed procedural safeguards in decisions regarding identification, evaluation and educational placement of handicapped children.

Due process simply means formalizing good procedures that are already happening in most good school systems. It means, for example:

1. notifying parents when a local or State educational agency proposes to change the educational placement of a child;

2. providing an opportunity for the parents or guardians to obtain an impartial due process hearing;

3. to allow them to examine all relevant records with respect to the classification or educational placement of their child;

4. to allow parents to obtain an independent educational evaluation of the child;

5. will provide procedures to protect the rights of the child when the parents or guardians are not known, unavailable, or when the child is a ward of the State by assigning an individual (not an employee of the State or local educational agency involved in the education or care of the child) to act as surrogate for the parents or guardians;

6. will provide provisions to insure that the decisions rendered in the impartial due process hearing are binding on all parties and subject only to the appropriate administrative or judicial appeal.

B. Public Law 94-142 provides for non-discriminatory testing and evaluation. For years special educators and parents of exceptional children have fought hard for the right to obtain educational services. But how many children have either escaped our notice or have been caught up in a system where they do not belong. One only has to look to Jane Mercer's work in Riverside, California or to court cases such as Larry P. v. Riles, or Diana v. State Board of Education to realize the injustices which have occurred in the classification, identification, and labeling of exceptional children.

P.L. 94-142 provides safeguards to assure that testing and evaluation materials as well as procedures utilized for the purposes of evaluation and placement of handicapped children will be selected and administered so as not to be racially or culturally discriminatory.

Such materials or procedures shall be provided in the child's native language or mode of communication.

Thirdly, that no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

And lastly, that we seek parent involvement through the initial planning and evaluation conferences and, of course, if necessary, through the use of due process proceedings.

C. The third procedural safeguard guaranteed by Public Law 94-142 is the right to access to a child's records. P.L. 94-142 sets forth three very basic principles with regard to the concept of recordkeeping;

1. parents must have access to the records of their children;

2. parents have the right to challenge existing data within those records; and

3. the schools must control what gets into a child's records, how long it stays there, and who is able to use these records and for what purpose.

5. Provides for a Free Appropriate Education -- Public Law 94-142 mandates that every handicapped child, consistent with State law, shall in fact be provided with a free appropriate public education at no additional cost to his parents or guardians. Furthermore, if it is deemed best by all appropriate parties that the child might be better served by a private school or facility the cost for receiving such services must also be assumed by the local or state educational agency which refers the child.

P.L. 94-142 reflects the strong conviction that no child or parents of a child who is placed in a private school or facility by a local educational agency should be financially penalized because the local educational agency does not have the adequate facilities to provide this child with an education in a public facility.

6. Provides for Single Agency Responsibility -- Public Law 94-142 requires that the State educational agency be responsible for: 1) insuring the implementation of and compliance with the provisions of the act; and 2) the general supervision of educational programs for handicapped children within the State, including all such educational programs administered by any other State or local agency.

Often referred to as the "smoking gun theory," this is a very important principle of the law for it tells us who is the one party responsible for the implementation, administration and supervision of the law. Moreover, it increases the responsibility upon the States by placing a target date of September 30, 1978 for providing all handicapped children with an appropriate special education and related services.

7. Authorizes Payments to the States for the Education of Handicapped Children -- To help ease the cost of providing special educational and related services to all handicapped children. Public Law 94-142, beginning September 30, 1978, establishes a payment formula based upon a gradually escalating percentage of the National average expenditure per public school child (was approximately $1,250 in the Autumn of 1975 when this legislation was being drawn up -- now, it stands at approximately $1,400 per child) times the number of handicapped children being served by each school district and State. In short, this is a reward system or financial entitlement based upon the number of handicapped children actually being provided with an appropriate education. Furthermore, the percentage of monies which the Federal government will entitle to the States will escalate on a yearly basis until 1982 when it will become a permanent 40 percent for that year and all subsequent years.

Formula Scale and Estimated Federal Fiscal Authorizations

Fiscal 1978	five percent ($387 million)
Fiscal 1979	ten percent ($775 million)
Fiscal 1980	twenty percent ($1.2 billion)
Fiscal 1981	thirty percent ($2.32 billion)
Fiscal 1982	forty percent ($3.16 billion)

Two points concerning the formula for the distribution of Federal funds need to be carefully noted. First, this formula carries with it an inflation factor (i.e., the actual money figure fluctuates with the inflationary-deflationary adjustments in the National average per pupil expenditure. Secondly, that this is only an "authorization mechanism." In other words, this formula only determines the level of authorization or the absolute ceiling for Federal dollars which can be appropriate. The actual amount of appropriations will be determined by the Congress with relation to its total fiscal budget.

8. Provides for Administrative Systems -- Public Law 94-142 establishes a series of administrative systems which will insure that every handicapped child from those living in a State's extremely rural and sparsely populated areas to those living in full-time custodial institutions will be provided with a free appropriate public education. The act, as has already been mentioned, further provides that all education programs within the State for all handicapped children, including all such programs administered by any other State or local agency, must meet State educational agency standards and be under the general supervision of the State education agency.

9. Provides for the Training and Inclusion of Professional Personnel -- Obviously with implementation of P.L. 94-142, there is going to be the massive need for pre-service and in-service training of professional staff. The U. S. Commissioner of Education is authorized, therefore, to make grants to institutions of higher education and other appropriate non-profit institutions to assist them

1) in providing training of professional personnel to conduct training of teachers and other specialists in fields related to the education of handicapped children; and

2) in providing training for personnel engaged or preparing to engage in employment as teachers, supervisors, or other personnel providing special services for the education of handicapped children.

Secondly, the Individual Education Programs required by P.L. 94-142 gives the teacher new power. Under this act the teacher becomes an active participant in discussing what can and cannot be done or accomplished. In the past, as with most Federal law, the teacher was made to comply with decisions and statutes made by others. Under P.L. 94-142, he has now become an active member in those decisions.

10. Provides for Accountability -- Public Law 94-142 contains a number of references regarding the development of systems of accountability. At the local level, for example, the law specifies that individualized education programs must include the documentation of the decisions reached concerning their objectives, content, implementation, and evaluation of every handicapped child's educational program. Moreover, P.L. 94-142 establishes the mandate that the State educational agency shall be responsible for assuring that all of the requirements of this act will be carried out. Finally, the law stipulates that the U. S. Commissioner must evaluate the impact of this act on an annual basis and provide a full report to the Congress no later than 120 days after the close of each fiscal year.

Conclusion

In summary and most succinctly, the specific purposes of the Education for All Handicapped Children Act are fourfold: 1) to insure that all handicapped children have publicly funded special education and related services made available to them no later than 1978; 2) to insure the rights of handicapped children, their parents and their guardians; 3) to relieve the financial burden placed on state and local governments to accomplish the above-mentioned purposes; and 4) to assess and insure the effectiveness of efforts to educate handicapped children.

FOOTNOTES

[1]Brown v. Board of Education of Topeka, 347 U. S. 483 (1954)

[2]Pennsylvania Association for Retarded Children v. Commonwealth of Pennsylvania, 343F. Supp. 279 (E.D. pa., 1972), Consent Agreement.

[3]Ibid.

[4]Mills v. Board of Education of the District of Columbia, 348 F. Supp. 866 (D.D.C. 1972).

[5]Ibid.

[6]Subcommittee on the Handicapped of the Committee on Labor and Public Welfare, United States Senate, Education of the Handicapped Act As Amended Through December 31, 1975, (Washington, U. S. Government Printing Office, 1976) p. 127.

[7]U. S. Congress, Public Law 93-380, Education Amendments of 1974, (August 21, 1974).

[8]U. S. Congress, Public Law 94-142, Education for All Handicapped Children Act (November 29, 1975).

[9]Subcommittee on the Handicapped, op. cit. p. 199.

[10]Public Law 94-142, op. cit.